



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 420

IN THE MATTER
OF
MARK A. BREEN

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Mark A. Breen (Mr. Breen) pursuant to §5 of the Commission's **Enforcement Procedures**. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 31, 1989, the Commission, pursuant to G.L. c. 268B, §4(a), initiated a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Mr. Breen. The Commission has concluded its inquiry and, on July 19, 1989, found reasonable cause to believe that Mr. Breen violated G.L. c. 268A.

The Commission and Mr. Breen now agree to the following findings of fact and conclusions of law:

1. At all times material to this matter, Mr. Breen was a staff attorney at the Massachusetts Housing Finance Agency (hereafter "the MHFA"). As such, he was a state employee within the meaning of G.L. c. 268A, §1.

2. The MHFA issues bonds to finance housing loans. The money raised is distributed to qualified borrowers through banks which participate in the agency's programs. The MHFA is divided into two divisions dealing with single-family and multi-family dwellings, respectively. Although his job description encompasses single-family dwelling mortgages, Mr. Breen primarily works in the multi-family division, providing legal advice on various issues.

3. In 1987, Mr. Breen hired Cornelius Fahy (Mr. Fahy), a mason, to repair the chimney and front steps of his home. Mr. Fahy was an Irish national, legally in the United States on a temporary work visa. Mr. Fahy was employed by the Empire Masonry Company, but took on additional freelance masonry work.

4. In September or October 1987, Mr. Fahy began doing masonry work on Mr. Breen's property. He worked evenings and weekends and became friendly with Mr. Breen, who was often around while Mr. Fahy worked.

5. Mr. Breen was satisfied with Mr. Fahy's work to the extent of commissioning additional projects. Mr. Fahy continued to work on Mr. Breen's property until November 1987.

6. In November 1987, Mr. Fahy was forced by problems with his visa to return to Ireland to reapply for admission to the United States. He left Mr. Breen's projects uncompleted until he returned in March 1988, with his visa problem resolved.

7. On June 3, 1988, Mr. Fahy and his wife (the Fahys) entered into a purchase and sale agreement for a single-family house. The Fahys planned to apply for a low interest loan ("the loan") funded by the MHFA under the First-Time Home Buyer Program ("FTHB").^{1/}

8. On June 14, 1988, Mr. Fahy gave Mr. Breen a check for \$2500. Mr. Fahy claims that the check was given to Mr. Breen for acts Mr. Breen would take as a private attorney regarding the loan. Mr. Breen maintains that the \$2500 was for past legal services unrelated to the loan provided to Mr. Fahy and for Mr. Breen's willingness to be Mr. Fahy's attorney in the future. Both Mr. Fahy and Mr. Breen agree, however, that whatever legal services were tendered by Mr. Breen to Mr. Fahy prior to June 14, 1988, Mr. Fahy was under no legal obligation to pay for them. Mr. Breen provided no legal services to the Fahys unrelated to the loan after receiving the \$2500.

9. Mr. Breen did not report the \$2,500 on his 1988 income tax returns.^{2/} In addition, no documentation exists (i.e., a file, retainer, notes, etc.) memorializing an attorney/client relationship between Mr. Breen and Mr. Fahy involving legal services unrelated to the loan.

10. Mr. Breen subsequently provided Mr. Fahy with MHFA literature (available to the general public), including a list of banks which administered money.

11. Toward the end of June 1988, the Fahys sought a FTHB loan at a bank in Canton, Massachusetts. The Fahys were told that the bank had distributed all its funds.

Mr. Fahy went back to Mr. Breen, who told him to apply to the People's Federal Bank in Brighton, which still had FTHB funds available.

12. On or about July 1, 1988, the Fahys filed an application with the People's Federal Bank in Brighton. Mr. Breen assisted the Fahys in filling out the required financial documentation.

13. In July 1988, after Mr. Fahy complained to him of the length of time the loan application was taking, Mr. Breen went to the MHFA lender representative in the FTHB program who was responsible for the loans granted by the bank to which the Fahys had applied. Mr. Breen identified himself as a fellow employee of the MHFA, seeking information on the status of the loan application made by the Fahys. In response to Mr. Breen's inquiry, the MHFA lender representative telephoned the bank and then explained to Mr. Breen that the bank was having some trouble getting certain information regarding the Fahys' finances.

14. Thereafter, Mr. Breen met with the Fahys on several occasions to discuss their difficulties with the bank. He also telephoned and met on several occasions with the MHFA lender representative and supplied him with financial information provided by Mr. Fahy, including a copy of a pay stub from the Empire Masonry Company and a wage verification form.

15. On September 1, 1988, the bank rejected the Fahys' mortgage application.

16. Section 4(c) of G.L. c. 268A prohibits a state employee from acting as agent or attorney for anyone other than the Commonwealth or a state agency in connection with any particular matter in which the Commonwealth or a state agency is a party or has a direct and substantial interest.

17. The Fahys' loan application was a particular matter^{3/} in which the Commonwealth, as provider of the funds, had a direct and substantial interest. When Mr. Breen acted as a private attorney for the Fahys in relation to their loan application, he acted as an attorney for someone other than the Commonwealth in connection with a particular matter of direct and substantial interest to the Commonwealth. Therefore, Mr. Breen violated §4(c).

18. Section 23(b)(3) of G.L. c. 268A prohibits a state employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties.

19. By accepting the \$2500 from the Fahys under the circumstances detailed in paragraphs seven through nine above, at or about the time when he began assisting them as a private attorney in relation to their loan application, Mr. Breen knowingly, or with reason to know, acted in a manner which would cause a reasonable person knowing these facts to conclude that the Fahys could unduly enjoy Mr. Breen's favor in the performance of his official duties. Therefore, Mr. Breen violated §23(b)(3).

In view of the foregoing violations of G.L. c. 268A, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Mr. Breen:

1. that he pay to the Commission the amount of two thousand dollars (\$2,000.00) as a civil penalty for his violation of G.L. c. 268A, §4(c);
2. that he pay to the Commission the amount of two thousand dollars (\$2,000.00) as a civil penalty for his violation of G.L. c.268A, §23(b)(3); and
3. that he waive all rights to contest the findings of facts, conclusions of law, and terms and conditions contained in this Agreement in any related administrative or judicial proceeding to which the Commission is or may be a party.

Date: July 6, 1992

¹MHFA provides below market interest rate mortgages to income eligible, credit worthy, first-time home buyers seeking to purchase property within specific statutory acquisition costs.

²Mr. Breen reported the \$2,500 on his 1989 income tax returns.

³"Particular matter," means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).